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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES KENNETH MCCALLUM,

Plaintiff,

v.

OFFICER HORLACHER,

Defendant.

Case No. 2:14-cv-00459-RFB-CWH

**DEFENDANT'S UNOPPOSED MOTION TO
EXTEND DISCOVERY PERIOD AND ALL
REMAINING SCHEDULING DEADLINES**

(First Request)

Defendant Sean Horlacher, by and through counsel, Adam Paul Laxalt, Nevada Attorney General, and Jared M. Frost, Deputy Attorney General, hereby move to extend the discovery period and all remaining scheduling deadlines for forty-six (46) days. Defendant's motion is made and based on the following memorandum of points and authorities, the attached exhibits, all pleadings and papers on file, and any other evidence the Court deems appropriate to consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background

This is an inmate civil rights action filed pursuant to 42 U.S.C. section 1983. See (ECF #3) (Complaint). On April 29, 2014, the Court issued its screening order. (ECF #2). The order

1 allowed Plaintiff to proceed on one claim of excessive force against the sole named Defendant,
2 Sean Horlacher. *Id.* at 5. Defendant Horlacher filed an Answer to Plaintiff's Complaint on
3 September 26, 2014. (ECF #11).

4 On January 30, 2015, the Court issued a scheduling order. (ECF #13). On February 18,
5 2016, the Court held a hearing on various pending motions and extended the discovery period
6 until May 12, 2016. (ECF #41). The Court also extended the deadlines to file discovery and
7 dispositive motions and scheduled a hearing on all pending motions on June 27, 2016. *Id.*

8 On March 22, 2016, Plaintiff filed motions to extend his copy limit (ECF #42) and to
9 compel the prison to provide legal supplies (ECF #43). Defendant responded to both motions.
10 See (ECF #44 and ECF #45). This unopposed motion to extend the discovery period and all
11 remaining scheduling deadlines for forty-six (46) days follows.

12 **II. Information Required By Local Rule 26-4**

13 Defendant provides the following information in accordance with Local Rule 26-4.

14 **A. Discovery completed**

15 On April 30, 2015, Defendant served Plaintiff with Defendant's first production of
16 documents.

17 On June 5, 2015, undersigned counsel mailed Plaintiff a letter indicating that
18 arrangements had been made for Plaintiff to view available video footage of the cell extraction
19 incident at Ely State Prison.

20 **B. Discovery that remains to be completed**

21 On February 26, 2016, Defendant served Plaintiff with requests for admissions. On
22 April 6, 2016, undersigned counsel mailed Plaintiff a letter indicating that a response to the
23 requests was past due. In a letter dated April 9, 2016, Plaintiff indicated that he had mailed a
24 response, noted his concern with the prison mail system, and requested that undersigned
25 counsel send him another copy of the request so that he could prepare and serve another
26 response. During a telephone conference on April 21, 2016, the parties agreed that Plaintiff
27 would serve his response by May 20, 2016. See Exhibit 1 (Declaration of Counsel).

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On March 20, 2016, Plaintiff served Defendant with a second request for production of documents. Plaintiff's second request for production of documents seeks disclosure of employee disciplinary and personnel records, grievance records, and investigative records related to eleven (11) prison employees involved in the cell extraction incident that is the subject of this lawsuit. Due to the substantial amount of the records requested and the prison's need to perform a security review before responding to the request, Defendant has not been able to complete a response to Plaintiff's second request for documents. During a telephone conference on April 21, 2016, the parties agreed that Defendant would serve his response to Plaintiff's second request for documents by May 20, 2016. *Id.*

Following the service of the responses to the outstanding discovery requests, the parties will also need time to review the responses and determine whether any further discovery is warranted and attempt to resolve any discovery disputes.

C. Reasons why the deadlines were not satisfied

Plaintiff reports that he has been unable to serve his response to Defendant's requests for admissions because of problems with the prison mail system. Defendant has been unable to complete a response to Plaintiff's second request for production of documents due to the substantial amount of records requested and the need to perform a time-intensive security review before responding to the request.

D. Proposed schedule for remaining deadlines

Defendant proposes the following schedule for the discovery period and remaining deadlines.

June 27, 2016	Close of discovery
July 11, 2016	Discovery and dispositive motions due
August 1, 2016	Responses to motions due
August 15, 2016	Replies due

III. Good Cause Exists To Extend The Discovery Deadlines

Defendant's request to extend the discovery deadlines is supported by good cause. The parties have been actively engaged in the discovery process since discovery reopened in

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February and agree that the discovery period and other scheduling deadlines should be extended in this case. *Id.* Extending the deadlines will allow the parties to complete the outstanding discovery requests and gather information that may help to resolve the case.

IV. Excusable Neglect Supports The Request To Extend The Discovery Deadlines

This motion is filed one (1) day short of twenty-one (21) days before the expiration of the current discovery deadline and therefore requires a showing of excusable neglect. See Local Rule 26-4. Defendant submits that this minor delay should be excused given that undersigned counsel commenced drafting the motion following his conversation with Plaintiff on April 21 but was unable to complete the motion until April 22 due to his responsibilities in other cases. *Id.*

V. The June 27, 2016 Hearing Should Be Vacated And Reset

Given the need for additional time to complete discovery and brief and post-discovery motions, the hearing currently set for June 27, 2016, should be vacated and reset to a date after the new proposed reply deadline of August 15, 2016.

VI. Conclusion

The discovery period and scheduling deadlines should be extended for forty-six (46) days, and the June 27 hearing should be vacated and reset.

DATED this 22nd day of April, 2016.

ADAM PAUL LAXALT
Nevada Attorney General

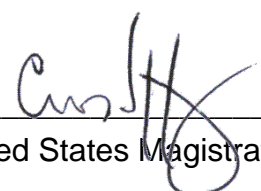
By: /s/ Jared M. Frost
JARED M. FROST
Senior Deputy Attorney General
Bureau of Litigation
Public Safety Division

Attorneys for Defendant

ORDER

IT IS SO ORDERED.

DATED: April 25, 2016


United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 22nd day of April, 2016, I served the foregoing, **DEFENDANT'S UNOPPOSED MOTION TO EXTEND DISCOVERY PERIOD AND ALL REMAINING SCHEDULING DEADLINES (First Request)**, by causing a true and correct copy thereof to be filed with the Clerk of the Court, using the electronic filing system, and by causing a true and correct copy thereof to be delivered to the Department of General Services, for mailing at Las Vegas, Nevada, addressed to the following:

James McCallum, #96779
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070
Plaintiff, Pro Se

/s/ Carol A. Knight
CAROL A. KNIGHT
An employee of:
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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EXHIBIT 1

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**UNITED STATES DISTRICT COURT
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DECLARATION OF COUNSEL

I, JARED M. FROST, hereby declare, based on personal knowledge and/or information and belief, that the following assertions are true:

1. I am a Senior Deputy Attorney General employed by the Nevada Attorney General in the Litigation Division, and I make this declaration on behalf of Defendant's motion to extend remaining scheduling order deadlines.

2. By this motion, I am requesting a forty-six (46) day extension of the discovery period and scheduling deadlines. The discovery period is currently set to expire on May 12, 2016. The Court reopened and extended the discovery period on one prior occasion. This is Defendant's first request for an extension.

3. On February 26, 2016, my assistant served Plaintiff with Defendant's requests for admissions. On April 6, 2016, I mailed Plaintiff a letter indicating that a response to the requests was past due. In a letter dated April 9, 2016, Plaintiff indicated that he had mailed a response, noted his concern with the prison mail system, and requested that I send him another copy of the request so that he could prepare and serve another response.

4. On April 21, 2016, I spoke with Plaintiff by telephone. Not having received Plaintiff's response, I informed Plaintiff that I would provide him with additional copies of Defendant's requests for admissions so that he could prepare and serve a new response and agreed to allow Plaintiff to serve the new response by May 20, 2016. I also informed Plaintiff that I would need additional time to complete a response to his second request for production of documents, and Plaintiff agreed that Defendant could serve his response by May 20, 2016. Because both parties desire to review the responses and determine whether any further discovery is warranted, Plaintiff and I agreed that the discovery period and other scheduling deadlines should be extended for an additional forty-six (46) days. At the end of the call, I informed Plaintiff that I would file a motion to extend the discovery period and other scheduling deadlines, and Plaintiff indicated that he would not oppose the motion.

5. Defendant's motion is made in good faith and not for the purpose of undue delay.

Pursuant to 28 U.S.C. section 1746 Declarant certifies, under penalty of perjury, that the foregoing is true and correct.

DATED this 22nd day of April, 2016.

ADAM PAUL LAXALT
Nevada Attorney General

By: /s/ Jared M. Frost
JARED M. FROST
Senior Deputy Attorney General
Bureau of Litigation
Public Safety Division
Attorneys for Defendant